



PERSISTENT

Agreement Start Date:	
Agreement Duration:	

# Persistent Customer Terms: Support – Supporting Materials

## 1.0 Overview

This document (“Agreement”) governs the purchase of support services by the customer (“Customer”) from Persistent Systems entity, for Persistent Systems’ CE/CLM Unite for Jira®, a Persistent Systems (“Persistent”) intellectual property asset (“Asset”). In addition, these terms may be used on a global basis by the parties’ “Affiliates”, meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature or by referencing these terms on Orders. Affiliates participate under these terms by placing Orders which specify service delivery in the same country as the Persistent Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.

Whereas, the Customer’s use of the Asset is governed by the license terms as set forth in a separate end user license agreement entered between the parties hereto (“hereinafter to referred as “EULA”). Any capitalized term which is not defined under this Agreement has the meaning as defined in the EULA.

**Orders.** “Order” means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference (“Supporting Material”). Supporting Material may include (as examples) support product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Persistent’s website.

**Order Arrangements.** Customer may place orders with Persistent through our website, customer specific portal, or by letter, fax or e-mail.

**Prices and Taxes.** Prices will be as quoted in writing by Persistent or, in the absence of a written quote, as set out on our website, customer-specific portal, or Persistent published list price at the time an order is submitted to Persistent. Prices are exclusive of taxes, duties, and fees (including relocation charges, installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Persistent order representative to discuss appropriate procedures.

**Invoices and Payment.** Customer agrees to pay all invoiced amounts for the support services annually in advance, within thirty (30) days of Persistent’s invoice date. In the event there is a delay in payment for more than 10 days from due date, Customer shall pay an interest greater of 1.5% per month or the



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maximum permitted amount on the delayed payments from the due date of payment. Persistent may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.

**Term of the support services:** Support services shall be provided to the Customer on an annual basis starting from the Agreement Start Date or the subscription start date, unless otherwise specified in any Order. Provided that Customer is current on the annual support for the Asset Persistent will provide support services for the Asset, via electronic access, only to Licensee's information systems technical support; (this assistance is not available to Licensee's end users;) that will include:

- 1) making available to Customer defect corrections, restrictions, and bypasses, if any, that Persistent develops for the Asset.
- 2) making available to Customer and authorizing Customer to use the most current commercially available version, release, or update of the Asset, should any be made available.
- 3) providing remote Customer assistance for Customer's installation and usage (how-to) questions submitted electronically in English by the Customer as described in the Maintenance and Support section.

**Renewal:** Customer may renew the Asset support services annually upon thirty (30) days' notice prior to the end of the then-current support term, subject to Persistent agreeing to continue to make such Asset support services available, however, in case of subscription-based license, support services get renewed along with the subscription term. In the event that Customer desires to reinstate support services after a period in which Customer allowed such support services to lapse, Customer may reinstate support services under the terms and conditions of this Agreement, however, in all such case, Customer may re-enroll only upon the payment of the annual support fees and all support fees that would have been paid had Customer not allowed support services to lapse and approval by Persistent. Payment of these fees would entitle Customer to all updates of the Software that have been released during such period.

Any defect corrections, restrictions, bypasses, versions, releases, and updates of the Asset will be governed by the License grant as set forth in EULA.

Non-renewal of Asset Support Services does not affect the license rights granted for the Asset under EULA.

**Eligibility.** Persistent's service, support and warranty commitments do not cover claims resulting from:

1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
2. modifications or improper system maintenance or calibration not performed by Persistent or authorized by Persistent;
3. failure or functional limitations of any non- Persistent software or product impacting systems receiving Persistent support or service;
4. malware (e.g. virus, worm, etc.) not introduced by Persistent; or



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5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Persistent's control.

**Dependencies.** Persistent's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.

**Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. All modifications made to the Asset by Persistent under this Agreement and all rights therein, including copyrights, shall belong exclusively to Persistent. Further, Customer grants Persistent a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Persistent and its designees to perform the ordered services under this Agreement.

**Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

**Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. Persistent does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Persistent has access to Customer PII stored on a system or device of Customer, such access will likely be incidental, and Customer will remain the data controller of Customer PII at all times. Persistent will use any PII to which it has access strictly for purposes of delivering the services ordered.

**Limitation of Liability.** The limitations and exclusions in this Section (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver. Regardless of the basis on which Customer is entitled to claim damages from Persistent (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Persistent's entire liability for all claims in the aggregate arising from or related to each Order under this Agreement will not exceed the amount of any actual direct damages up to the charges (if the Order is subject to fixed term charges, up to three months' charges) Customer paid under the Order that is the subject of the claim.

UNDER NO CIRCUMSTANCES IS PERSISTENT, ITS SOFTWARE DEVELOPERS OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: LOSS OF, OR DAMAGE TO, DATA; SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.



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**Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

**Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within thirty (30) days after being notified in writing of the details. Persistent has a right to terminate the Agreement if the Customer fails to pay any sums due as prescribed in this Agreement. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.

**Assignment.** Except as provided in the Agreement, neither party may assign or transfer the Agreement nor any of its rights nor obligations under this Agreement without the other party's prior written consent which consent shall not be unreasonable withheld or delayed. Any attempted assignment or transfer without such consent will be void. Persistent may assign or transfer any of its rights or obligations under this Agreement and applicable service upon notice in connection with a merger, reorganization, transfer, sale of sets or product lines, demerger or spin-off transaction or change of control or ownership of Persistent, or its permitted successive assignees or transferees.

**General.** Use, distribution or disclosure of products by the U.S Government is subject to DFARS 227.72023 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software-Restricted Rights). This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of Persistent or the Persistent Affiliate accepting the Order and the courts of that locale will have jurisdiction, however, Persistent or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and Persistent agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of Delaware, excluding rules as to choice and conflict of law.

#### **Support Offerings:**

Persistent's support services will be provided as described below or in any applicable Supporting Material.

## **2.0 Definitions**

**Support Request** shall mean a record created when a customer makes the initial support request. This record becomes a part of Persistent's support management database and records the essential information about the customer question or problem.

**Request for Enhancement (RFE)** shall mean a record created to represent a request to modify or enhance the Asset.



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**Defect Record** (Defect) shall mean a record created to represent a programming defect in the Licensed Work.

**Support Response Time** means the time from when a support request is created, and an initial response is provided.

**Fix Pack** shall mean a product update to the Asset that contains a cumulative collection of code changes that have been made since the Asset's last release or Fix Pack. A Fix Pack may contain multiple Interim Fixes.

### 3.0 Maintenance and Support Responsibilities

The Customer will initiate requests for support, when an issue occurs, by contacting Persistent.

Upon receipt of a support request, Persistent will perform the following actions:

a.	Create a Problem Record and provide a reference number for the Customer.
c.	Analyze the problem symptoms and gather additional data from the customer as required to validate the problem severity and diagnose the suspected error.
d.	If possible, provide an answer, non-code solution, or reasonable workaround to Customer.
e.	If the problem is determined to be a Defect: <ul style="list-style-type: none"><li>• A Defect Record will be created and assigned a Defect Severity.</li><li>• The Defect reference number will be provided to the Customer.</li></ul> The Support Record will be closed upon delivery of the Defect corrections.
f.	If the problem is determined to be a Request For Enhancement: <ul style="list-style-type: none"><li>• An RFE will be created, and a Reference number will be provided to the Customer.</li><li>• The Support Record will be closed with a reference to the RFE.</li></ul>
g.	If the problem is determined to be a user error or configuration error: <ul style="list-style-type: none"><li>• The Support Record will be closed after confirming with the Customer.</li></ul>

### 4.0 Support Response Time

The support response time is 24 hours.

### 5.0 Defect Delivery Process

Fix Packs will include:

- Accumulated fixes for most defects found since the previous fix pack or release. (Certain defects may not be fixed due to low severity or very large effort required to fix.)
- Enhancements to the Asset that were purchased by Customer through a separate agreement, if any exist. (This Agreement does not include enhancements.)
- Installation instructions and a summary documenting the changes in the fix pack.